Editor's note: Erratum issued Feb. 18, 2000, revising Headnote 1 on page 283. The change has been made in the text below, and the erratum can be found at 144 IBLA 292A

AEJH 1985 LIMITED PARTNERSHIP
ALEXANDER ENERGY CORP.

IBLA 94-893 Decided June 11, 1998

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming an order by the Tulsa District Office requiring the submission of a sundry notice of intent to plug and abandon two wells on lease No. 14-20-0207-1877.

Reversed.

1. Indians: Mineral Resources: Oil and Gas: Generally--Oil and Gas Leases: Generally--Oil and Gas Leases: Assignments and Transfers

   Regarding transfers of leases by assignment, sublease or otherwise, 43 C.F.R. § 3106.7-2 provides that the transferor and its surety remain responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. Where a transfer of record title has not been approved, the obligation of the transferor and its surety to the United States continues as though no such transfer has been filed for approval. After approval of the transfer of record title, the transferee and its surety become responsible for performance of all lease obligations, notwithstanding any terms in the transfer agreement to the contrary, including the obligation to plug and abandon wells.

2. Indians: Mineral Resources: Oil and Gas: Generally--Indians: Mineral Resources: Oil and Gas Leases: Allotted Lands

   The regulations that appeared at 25 C.F.R. §§ 212.23 and 212.24 (1994) did not address the issue of the purported duties of successive, unrelated lessees with respect to unplugged wells abandoned by prior parties. The cited regulations do not support BLM's assertion

that a subsequent lessee's duty to conserve and protect the leasehold includes the duty to plug wells improperly abandoned by a prior lessee with which there is no privity of contract.

3. Indians: Mineral Resources: Oil and Gas: Generally--Indians: Mineral Resources: Oil and Gas: Allotted Lands

Paragraph 14 of the standard lease contract form for negotiated oil and gas leases of allotted Indian lands, and other language in various paragraphs thereof, shows that the parties contemplated that the lessee would be liable only for its own operations and actions, absent an approved transfer. If BLM or BIA intended to abrogate or alter this covenant, they were required to do so in writing in the lease, so that the lessee would be on notice that it was expected to assume the liabilities of a prior lessee and have a fair opportunity to decide whether to do so before executing the lease.

4. Indians: Mineral Resources: Oil and Gas: Generally--Indians: Mineral Resources: Oil and Gas: Allotted Lands--Oil and Gas Leases: Generally

Allotted Indian lands are not excluded from the oil and gas operating regulations set forth at 43 C.F.R. Subpart 3100. Only Indian reservations are excluded therefrom. 43 C.F.R. §§ 3100.0-3(a)(2)(ii) and 3161(a). In addition, Paragraph 3(g) of the standard lease contract form expressly provides to the contrary.

5. Indians: Mineral Resources: Oil and Gas: Generally--Indians: Mineral Resources: Oil and Gas: Allotted Lands--Oil and Gas Leases: Generally

The regulation at 43 C.F.R. § 3162.3-4(a) requires the lessee/operator to promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities. That regulation does not apply where no wells were drilled on a lease before it was surrendered and it is uncontested that appellants did no more than pay the required rental, as no operations of any kind were conducted on the leasehold. The regulation at

> 43 C.F.R. § 3104.8 requires BLM and BIA to ensure that all terms and conditions of the lease have been met before a bond is released. The regulation at 43 C.F.R. § 3108.1 pertains to the continuing obligation of a lessee to place all wells on the leasehold in condition for abandonment and complete reclamation when the lease is relinquished. These regulations should have been enforced against the lessee that drilled the unplugged wells or against its bond. Therefore, no duty to plug and abandon the subject wells is imposed by 43 C.F.R. § 3162.3-4(a) on a subsequent lessee not in privity with such former lessee.

APPEARANCES: Steven R. Welch, Esq., Oklahoma City, Oklahoma, for Appellants.

OPINION BY ADMINISTRATIVE JUDGE PRICE

AEJH 1985 Limited Partnership (AEJH) and Alexander Energy Corporation (Alexander), the general partner of AEJH, have appealed from the September 9, 1994, Decision of the Acting Deputy State Director, New Mexico State Office, Bureau of Land Management (BLM), upholding an order by the Tulsa District Inspection and Enforcement Staff to submit a Sundry Notice of Intent to Plug and Abandon two inactive wells. 1/

On June 20, 1994, the Tulsa District Office issued a notice to Alexander ordering it to complete a Sundry Notice to Plug and Abandon two wells that had been noted on lease No. 14-20-0207-1877. The notice stated that based on information obtained from the Bureau of Indian Affairs (BIA), it was concluded that Alexander was the current lessee of record and that it had a nationwide bond in association with this lease. The notice warned that if the forms were not submitted, BLM would request the attachment of Alexander's bond. The notice recited that "[t]his order is `in reference to 43 C.F.R. 3162.3-4(c).'"

Alexander and AEJH requested State Director review, arguing that 43 C.F.R. § 3108.1 imposes responsibility for plugging and abandoning the wells and for reclaiming the site on the previous lessee. The Acting Deputy State Director rejected the argument, reasoning as follows:

> The Office of the Solicitor advises that allotments held in trust for the benefit of individual Indians are not public domain lands, and under 43 C.F.R. 3100.0-3(a)(2)(ii) Indian lands are specifically excluded. The sections of 43 CFR cited by Alexander (3104.8 and 3108.1) apply to Federal leases, not Indian leases. The Solicitor further advises that the lease agreement document of lease No. 14-20-0207-1877, 25 CFR 212.23, and 212.24 clearly

1/ The order also stated that in addition to the two abandoned and unplugged wells, an inspection revealed the presence of an abandoned stock tank and two reserve pits on the lease.

> provide that the lessee has the responsibility to conserve and protect the property and its natural resources, which include[s] the abandonment of existing wells and facilities at the time of the lease execution.

(Decision at 1-2.)

We observe that BLM did not explain how it was able to find it appropriate to rely upon 43 C.F.R. § 3162.3-4(c) for purposes of issuing the order to submit a Sundry Notice, and yet conclude, as a result of its interpretation of the provisions of 43 C.F.R. § 3100.0-3(a)(2)(ii), that Subpart 3100 was inapplicable to Indian lands. As an additional ground, the Decision relied upon the provisions of 25 C.F.R. §§ 212.23(a) and 212.24(b) 2/ (1994), which purportedly form the regulatory basis for Paragraph 5 of the lease, as follows:

> The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof * * * upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered.

(Decision at 2.)

The two wells at issue were drilled some years ago under lease contract No. 14-20-0207-1463, an allotted Indian lands lease between Lee Black, Harry Pickering, Minnie Pickering, Sofa Pickering Koshiway, and Richard Whitehorn as lessors, and Vulcan Oil and Gas Corporation as lessee (the Vulcan lease). The lease was for an initial term of 3 years, and was for 160 acres in the NE¼ of sec. 17, T. 22 N., R. 3 E., Indian Meridian.

A copy of the Lease Record for the Vulcan lease was included in the record and contains the notation: "Reissued under new lease 14-20-0207-1735 11-22-85." That second lease, approved on or about November 22, 1985, was between Henry Pickering, Minnie Pickering Ryan, Sofa Pickering Koshiway, and Richard Whitehorn as lessors, and Russell Harviston & Associates as lessee (Harviston), is in the record. The next entry on the Lease Record card is lease contract No. 14-20-0207-1877, which was issued on or about September 16, 1991. Sofa B.H. Headman was the lessor, and Geoex Resources, Inc. was the lessee. Again, the same 160-acre parcel was leased for a 3-year term. The language of all three lease contract forms is identical.

2/ The Decision actually cites 25 C.F.R. § 212.24(e). There was no subparagraph (e) in the 1994 regulation or the 1993 regulation, and we assume that (b) was the citation actually intended. The 1993 regulations were revised as of April 1, 1994, but there were no changes in § 212.24.

Geoex assigned an undivided one-half interest in that lease to Alexander, evidently retaining the remaining one-half interest. The assignment was approved by BLM on December 20, 1991. Alexander then assigned its interest to AEJH. That assignment was approved on February 24, 1992. An October 16, 1992, memorandum from the Pawnee Agency, BIA, stated that Geoex had requested cancellation of the lease (with other leases) and that the lease had been terminated. The memorandum also stated that BIA had conducted a lease inspection and found no activity on the tracts and that the bonds therefore had been released.

In their submission to the State Director and their Statement of Reasons (SOR) for appeal, Appellants have provided more detailed background information on the Vulcan lease. According to Appellants' evidence, the wells here at issue are the Blackhawk No. 1-A and the Blackhawk No. 2-A, and these were drilled by Vulcan in the NE¼ of sec. 17, T. 22 N., R. 3 E., in 1982. Appellants further assert that Vulcan assigned all of its interest in lease No. 14-20-0207-1463 to Commodore Resources Corporation (Commodore), while reserving an overriding royalty interest. Commodore in turn assigned all of its interest, insofar as it covered the SW¼NW¼NE¼ of sec. 17, to F.P.I.C. Oil and Gas Development Program I in July 1982. Commodore assigned the SW¼NE¼ of sec. 17 to F.P.I.C. Oil and Gas Development Program II in August 1982. However, neither well was completed as a commercial producer and the lease terminated by its terms or was canceled. 3/

Appellants state that to their knowledge no release has been filed of record for the Vulcan lease. They do not know, and the case record does not show, whether or when any of the parties owning or having owned an interest in the Vulcan lease were released from their bonds. Appellants assume the bonds were released, as do we, because BLM has not stated otherwise. Indeed, we note that BLM has neither objected to the accuracy of the information pertaining to lease No. 14-20-0207-1463 nor otherwise controverted Appellants' assertions of fact. In any event, it is clear that the wells were not plugged at the time the Vulcan lease was terminated or canceled.

In their SOR, Appellants aver that the wells were drilled and constructed by parties owning an interest in the Vulcan lease and that Appellants have never owned any interest in that lease. (SOR at 5-6.) They also aver that they have never owned, operated, or used the wells or conducted any operations on the lands pursuant to their lease No. 14-20-0207-1877. (SOR at 6.) Thus, they maintain they are not responsible for plugging the wells, because there is no privity of contract between them and Vulcan or Vulcan's assignees, and because they have conducted no operations or taken any action that would support a conclusion that they intended to become liable for plugging the wells.

Appellants further argue that the terms of their lease contract do not support the State Director's Decision. Specifically, they contend

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3/ Appellants are unsure as to precisely how the lease ended, and the record on appeal does not contain the information.

that Paragraph 5 of the lease, quoted above, does not require any lessee or operator to plug a well that the lessee or operator did not drill, use or operate. (SOR at 7.) They also rely on Paragraph 3(i) of the lease, which states that the lessee is responsible "for all damages to the lands * * * caused by its operations hereunder" and assert that the language "caused by its operations hereunder" manifests an intent to hold the lessee responsible only for its own operations conducted under the terms of its lease, and not for operations conducted by other parties under the terms of a prior lease, so that Paragraph 3(i) constitutes a limitation on Paragraph 5. (SOR at 7-8.) They maintain that Paragraph 5 must be interpreted in a manner that results in a construction that is consistent with Paragraph 3(i). (SOR at 8-9.)

Appellants also submit that the Vulcan lease provides in Paragraph 8 that upon termination of that lease, the lessor became the owner of all casing in the wells, material, structures, and equipment that were not removed from the lease premises within 90 days after termination of the lease. Because no operations were conducted by any operator or owner under the Geoex lease and there is no conveyance of such property in the lease contract, Appellants argue, they did not as subsequent lessees become the owner of the wells or incur any obligation in respect thereto. (SOR at 9.)

Lastly, Appellants contest BLM's reliance on 25 C.F.R. Part 212 (1994) as authority to require them to plug the wells. They argue that there is nothing in Part 212 that "specifically provides that upon approval by the BIA of an oil and gas lease each lessee becomes obligated for all prior acts and omissions of owners and operators of expired leases covering the same lands." (SOR at 10.) Thus, Appellants submit, there is no regulatory support for the BLM Decision requiring them to plug the wells. We agree with the arguments raised by Appellants and conclude that the Decision must be reversed.

The BLM's actions here are an attempt to hold an innocent party responsible for the Government's failure to properly manage and administer the lease under which the two wells were drilled. It is undisputed that Vulcan drilled the wells, and that at the end of Vulcan's lease term the wells were not plugged and abandoned. Notwithstanding this, Vulcan apparently was not held responsible, and the record does not disclose why. 4/ According to Appellants, Vulcan assigned all its interest in the lease not to Geoex, Appellants' predecessor, but to Commodore, while retaining a 25-percent overriding royalty. Commodore subsequently assigned its interests in the lease.

[1] With respect to transfers of leases by assignment, sublease or otherwise, 43 C.F.R. § 3106.7-2 provides as follows:

4/ Neither the lease files nor excerpts of those files that would allow us to trace the lease history for this parcel of land were provided. As noted, however, BLM has not controverted any of Appellants' assertions of fact.

> The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for performance of all lease obligations, notwithstanding any terms in the transfer to the contrary.

(Emphasis supplied.) Thus, the obligation to properly plug and abandon the wells belonged to Vulcan and its assignees.

When the Vulcan lease ended, a second new lease with Harviston was executed, followed by a third new lease with Appellants' predecessors-in-interest. Thus, unless BLM can show that Harviston or Appellants' predecessor expressly undertook Vulcan's duty to properly plug and abandon the wells, that is the end of the matter.

Although we find no Board precedent squarely on point, our analysis finds support in the decisions that discuss the duty to properly plug and abandon wells. In each instance where the obligation was found to be that of a subsequent party to a lease, such parties were successors-in-interest or in privity with the former lessee, which is plainly not the case here. See, e.g., Cross Creek Corp., 131 IBLA 32 (1994) (lessee of record); Glen Morgan, 122 IBLA 36, 44 (1992) ("there is no indication that the obligation to properly plug and abandon a well drilled during the lease term terminated upon the expiration of the lease;" appellant, who had acquired a leasehold interest during the lease term, was properly held responsible for reclamation); Ralph G. Abbott, 115 IBLA 343, 346 (1990) (upon approval of an assignment, the assignee becomes the Government's lessee and is responsible for compliance with the lease terms, without regard to whether assignee held any interest in the formation in which the well was completed or received income therefrom).

The BLM relies on Paragraph 5 of the Geoex lease, Surrender and Termination, to conclude that it has the authority to order Appellants to plug the wells and perform all reclamation requirements as needed. Paragraph 5 states that the lessee has the right to surrender and terminate the lease "upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered * * *." It is apparent that BLM believes that the phrase "wells drilled on * * * the lease surrendered" means any well present on the leasehold without regard to whether the lessee drilled it. The BLM concludes that this Paragraph is supported by 25 C.F.R. §§ 212.23 and 212.24 (1994), which impose a duty to conserve and protect the property and its natural resources, and that this general duty includes "the abandonment of existing wells and facilities at the time of the lease execution." (Decision at 1-2 (emphasis supplied).) We think that the

emphasized language itself reveals the flaws in the premises underlying the position taken by BLM and by the Office of the Solicitor in a memorandum to BLM.

[2] The regulation at 25 C.F.R. § 212.23 (1994) permitted cancellation of the lease for good cause upon either the lessor's or the lessee's application, or when the Secretary determined that there had been a violation of either the lease provisions or regulations. The regulation at § 212.24(a) (1994) required lessees to observe the operating regulations on restricted Indian lands. Subpart (b) 5/ of that regulation provided that all leases issued pursuant to Part 212 were to be subject to such restrictions "as to the time or times for the drilling of wells and as to the production from any well * * * [that] may be necessary or proper for the protection of the natural resources of the leased land * * *." The substance of 25 C.F.R. § 212.24(b) is reflected not in Paragraph 5 of the lease contract, but in Paragraph 11 thereof. Neither regulation addressed well abandonment or the purported duties of successive, unrelated lessees with respect to wells abandoned by third parties, and it is plain that neither lease cancellation for cause nor drilling and production restrictions is an issue in this appeal. Accordingly, we find that the cited regulations do not support BLM's assertion that the duty to conserve and protect the leasehold includes "the abandonment of existing wells and facilities at the time of the lease execution."

[3] We find, moreover, that other lease provisions contemplate liability for the wells drilled by the lessee and any duly approved transferees of the lessee. Paragraph 3(f), Diligence, prevention of waste, requires "reasonable diligence in drilling and operating wells" and preventing the entry of water into productive strata "through wells drilled by the lessees." Paragraph 3(i) specifically states that the lessee is liable for damages to the leasehold "caused by its operations hereunder." These references would be rendered meaningless if we accepted the construction urged by BLM, and we therefore decline to do so. More to the point, we believe that BLM's position that liability for violations of lease terms somehow migrates from lease to lease is decisively rebutted by Paragraph 14, Heirs and successors in interest, which unambiguously states that each lease obligation extends to and binds only the "heirs, executors, administrators, successors of or assigns of the respective parties." If BLM intended to abrogate or alter this covenant, it was required to do so in writing in the lease, so that the lessee would be on notice that it was expected to assume the liabilities of a prior lessee and have a fair opportunity to decide whether to do so.

[4] The final error to be discussed is the contention that Appellants' lease is not subject to the operating regulations in 43 C.F.R. Subpart 3100 because 43 C.F.R. § 3100.0-3(a)(2)(ii) expressly excludes "Indian lands." (Decision at 1.) This is incorrect. The cited exclusion

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5/ See note 2, ante.

pertains to Indian reservations, not allotted Indian lands. More particularly, Paragraph 3(g) of the Appellants' lease, Regulations, states that the lessee agrees "[t]o abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter inforce [sic] relative to such leases including 30 CFR Part 221 * * *." The regulations at 30 C.F.R. Part 221 (1994) related to onshore oil and gas operations. However, prior to the time that Appellants' lease was executed by its predecessor-in- interest, 30 C.F.R. Part 221 was redesignated as 43 C.F.R. Part 3160. 48 Fed. Reg. 36583 (Aug. 12, 1983). The authority for the regulations at Part 3160 includes the Act of March 3, 1909, as amended, 25 U.S.C. § 396 (1994), which allowed the leasing of allotted Indian lands. 43 C.F.R. § 3160.0-3. Departmental regulation 43 C.F.R. § 3161.1(a) provides that "[a]ll operations conducted on a Federal or Indian oil and gas lease by the operator are subject to the regulations in this part." Thus, the regulations governing well abandonment found at 43 C.F.R. § 3162.3-4 are applicable to this lease contract, contrary to BLM's assertions.

[5] Having determined that 43 C.F.R. Subpart 3100 is applicable to allotted Indian leases, Appellants are further supported by 43 C.F.R. § 3162.3-4(a), which states that:

> The operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities * * *.

(Emphasis supplied.)

No wells were drilled or newly completed on the Geoex lease before it was surrendered; indeed, it is uncontested that Appellants did no more than pay the required rental, as no operations of any kind were conducted on the leasehold. In that regard, Appellants correctly rely upon the provisions of 43 C.F.R. §§ 3104.8, Termination of period of liability, and 3108.1, Relinquishments (1994), as further support for their position. The former regulation clearly requires BLM and BIA to ensure that all terms and conditions of a lease have been met before a bond is released, while the latter pertains to the continuing obligation of a lessee to place all wells on the leasehold in condition for abandonment and complete reclamation even when the lease is relinquished. These regulations are applicable to allotted Indian leases, and they should have been enforced against Vulcan and its bond. Therefore, no duty to plug and abandon the subject wells arises from § 3162.3-4(a), and neither regulation authorizes the construction here attempted by BLM.

In summary, we hold: (1) that the rights and obligations of an oil and gas lease may not be imposed on third parties, absent a duly approved transfer by assignment, sublease or otherwise; (2) that the execution of a

new lease contract with unrelated parties establishes new rights and obligations that are independent of those created pursuant to the prior lease; (3) that nothing in the paragraphs and clauses contained in the standard allotted Indian oil and gas lease contract form permits BLM to unilaterally shift liability from one lease to another; and (4) the operational regulations in 43 C.F.R. Part 3100 are applicable to allotted Indian oil and gas leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed.

_____
T. Britt Price
Administrative Judge

I concur:

_____
David L. Hughes
Administrative Judge

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Interior Board of Land Appeals
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IBLA 94-893	:	SDR (NM) 94-036
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AEJH 1985 LIMITED PAKINERSHIP	:	Oil & Gas

ERRATUM

In headnote I of the above-captioned decision, found at 144 IBIA 283, the following sentence appears:

> Where a transfer of record title has been approved, the obligation of the transferor and its surety to the Uhited States continues as though no such transfer has been filed for approval.

The sentence is revised to read as follows:

> Where a transfer of record title has not been approved, the obligation of the transferor and its surety to the Uhited States continues as though no such transfer has been filed for approval.

T. Britt Price
Administrative Judge

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